

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-125978-11

Date:

July 13, 2011

LEGEND

X =

Y =

D1 =

D2 =

D3 =

State =

n =

Trust1 =

Trust2 =

Trust3 =

Trust4 =

Trust5 =

Trust6 =

Dear :

This responds to a letter dated May 26, 2011 submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1. X was the sole shareholder of Y stock at all times since D2. The shareholders of X include n individuals, Trust1, Trust2, Trust3, Trust4, Trust5, and Trust6. X represents that Trust1, Trust2, Trust3, Trust4, and Trust5, have met the qualified subchapter S trust (QSST) requirements described in § 1361(d)(3) at all times since D2 (collectively, the QSSTs). X represents that Trust6 has met the electing small business trust (ESBT) requirements described in § 1361(e)(1) at all times since D2.

X filed Form 2553, Election by a Small Business Corporation, with an effective date of D2. X also elected to have Y treated as a qualified subchapter S subsidiary (QSub) described in § 1362(b)(3)(B) with an effective date of D2. Finally, X filed Form 8716, Election To Have a Tax Year Other Than a Required Tax Year, for the tax year beginning D2.

On D3, X discovered Trust6 failed to make an ESBT election and consent to X's election to be an S corporation. X and the Trustee of Trust6 filed the paperwork required by Rev. Proc. 2003-43, 2003-1 C.B. 998. The Service Center approved the late ESBT election associated with the ineffective S election relief request under Rev. Proc. 2003-43.

The trustees, not the beneficiaries, of Trust1, Trust2, Trust3, Trust4, and Trust5 consented to the Form 2553, Election by a Small Business Corporation, for the Trusts. Consequently, the QSSTs did not properly consent to X's election to be an S corporation, thus making the election ineffective on D2 under § 1362(a)(2). Additionally, the trustees, not the beneficiaries, of the QSSTs consented to the relief request under Rev. Proc. 2003-43 on D3. Therefore, the inadvertent S election relief granted under Rev. Proc. 2003-43 was also ineffective.

X represents that the circumstances resulting in the ineffectiveness of X's S corporation election were inadvertent and not motivated by tax avoidance. X further represents that X and its shareholders have filed all returns consistent with X's status as an S corporation since D2. X and its shareholders have agreed to make such adjustments

(consistent with the treatment of X as an S corporation) as may be required by the Secretary.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the information submitted and the representations made, we conclude that X's S corporation election on D2 and late S corporation election on D3 were ineffective for the taxable year beginning D2. We further conclude that the circumstances resulting in such ineffectiveness were inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from D2, provided X's S corporation election was otherwise effective and was not otherwise terminated under § 1362(d). We further conclude that Trust6 will be treated as an ESBT from D2, Y will be treated as a QSub effective on D2, and the election made by X on Form 8716 to have a tax year other than a required year will be treated as effective on D2.

This ruling is contingent upon the beneficiaries of Trust1, Trust2, Trust3, Trust4, and Trust5 filing QSST elections for the QSSTs, with an effective date of D2, with the appropriate service center within 120 days of the date of this ruling. A copy of this letter should be attached to each QSST election.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or its ability to have a tax year other than a required tax year. Further, no opinion is expressed as to whether Trust1, Trust2, Trust3, Trust4, or Trust5 qualify as QSSTs, whether Trust6 qualifies as an ESBT, or whether Y qualifies as a QSub.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Charlotte Chyr
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes